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**MAILED**

**JUN 21 2005**

**GROUP 3600**

**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 09/877,188  
Filing Date: June 11, 2001  
Appellant(s): FECTEAU ET AL.

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John Darling  
For Appellant

**SUPPLEMENTAL EXAMINER'S ANSWER**

This is in response to the appeal brief filed 6/9/04 and the Order Returning Undocketed Appeal to Examiner mailed 04/29/05.

*Handwritten signature*

*Handwritten initials*

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**(1) *Real Party in Interest***

A statement identifying the real party in interest is contained in the brief.

**(2) *Related Appeals and Interferences***

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

**(3) *Status of Claims***

The statement of the status of the claims contained in the brief is correct.

**(4) *Status of Amendments After Final***

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) *Summary of Invention***

The summary of invention contained in the brief is correct.

**(6) *Issues***

The appellant's statement of the issues in the brief is correct.

It is noted that the Interview Summary of January 15, 2004 apparently omitted an agreement that was reached. Applicants have correctly identified on page 17, in the 2<sup>nd</sup> paragraph under the "Issues and Rejections" section of the Appeal Brief filed on June 9, 2004 that, in addition to claim 33 (and the claims which depend from it, i.e., 34-36), dependent claims 88-91, 96-99, 105-108 and 119-121 patentably define over the combination of AAPA and Christensen et al. The limitations of these claims, namely the specific millimeter distances that the steering position is disposed forward of the forward most drive axle, is not taught by the AAPA and Christensen et al. combination and it was agreed during that interview that design choice rejection could not be properly maintained on these claims.

The statement that "In the event that the Examiner's Answer rejects those claims, Appellants will address them in a Supplemental Reply Brief" (on page 17, Issues and Rejections, 2<sup>nd</sup> paragraph) is not in compliance with 37 CFR 1.192 which requires that all of the claims on appeal be argued in the Appeal Brief. However, since these claims (33-36, 88-91, 96-99, 105-108 and 119-121) are not on appeal this statement has been ignored for purposes of the Examiner's Answer.

**(7) Grouping of Claims**

Appellant's brief includes a statement that claims of Group I and Group II (Listing of claims in each group is supplied by Appellants on page 18 of the Appeal Brief filed 6/9/04) do not stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

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However, it is noted in the Appeal Brief that claim 49 does not appear under the "Grouping of Claims". The claim is argued in the Appeal Brief on page 72, it is included in the Appendix and has been rejected. Therefore, this non-inclusion is believed to be a typo and claim 49 should be included in Group II since it is rejected in the same group as claims 48 and 51.

**(8) *Claims Appealed***

A substantially correct copy of appealed claims 1-32, 37-87, 92-95, 100-104 and 109-130 appears on pages 78-94 of the Appendix to the appellant's brief. The minor errors are as follows: Claim 125 is not a new claim.

**(9) *Prior Art of Record***

3734219	CHRISTENSEN ET AL.	05-1973
5944380	ATHERLEY	08-1999

**(10) *Grounds of Rejection***

The following ground(s) of rejection are applicable to the appealed claims:

1. Claims 1-21, 24, 77-87, 109, 113 and 114 are rejected under 35 U.S.C. 103(a) as being unpatentable over Applicant's Admitted Prior Art, hereafter, AAPA, in view of and Christensen et al. (U.S. Patent 3,734,219).

**(a)** AAPA discloses a snowmobile (110) comprising a frame (Figure 1) having a straddle-type, singular seat (Figure 1), a front suspension being one of an A-arm suspension system and a trailing arm suspension system (Figure 1), first, second and third seat positions on a singular defined by the seat (e.g., a first spot and second spot on the seat), an engine (Figure 1), a drive track (120), a forward-most drive axle (144), two skis (116), and a steering device (e.g., the entire steering unit of 110) having a steering position (a spot on the steering device, 132), a steering shaft (136) wherein the first seat position is disposed about 565 mm behind the forward most drive axle, the second seat position is disposed behind the first seat position by about 340 or 290 mm, the third seat position is disposed behind the second seat position by about 310 or 345 mm and the frame is between 1493 and 1913 mm long (see Figures 1 and Figure 8 describing various measured distances on a conventional snowmobile, which measured distances in Figure 8 for the conventional snowmobile can meet the distances required by the claims).

**(b)** AAPA does not specifically disclose that the angle of the steering shaft is 33° from the vertical or that the steering position is disposed forward of the forward most-drive axle.

**(c)** Christensen et al. disclose a snowmobile having a steering position (the position midway between handlebars 10) disposed forward of the forward-most drive axle (Figure 3 shows this configuration) and that the angle of the steering shaft is 33° from the vertical (col. 2, lines 43-45) in order to help provide a stable steering system (column 1, lines 37-38).

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(d) It would have been obvious to one of ordinary skill in the art at the time of the invention to provide that the steering position is disposed forward of the forward most-drive axle and a steering shaft having an angle of 33° from the vertical on the AAPA snowmobile as taught by Christensen et al., in order to construct a preferred snowmobile design and to help provide a stable steering system.

(e) It is noted that since it has been held that discovering an optimum value of a result effective variable (for example an optimum angle of a steering shaft, various seat positions as measured from a forward-most drive axle or a distance between a steering position and a forward-most drive axle) involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

2. Claims 26-32, 37-47, 50 and 110 are rejected under 35 U.S.C. 103(a) as being unpatentable over AAPA in view of Christensen et al.

(a) AAPA disclose a snowmobile (110) comprising a frame (Figure 1) having a straddle-type, singular seat (Figure 1), a front suspension being one of an A-arm suspension system and a trailing arm suspension system (Figure 1), first, second and third seat positions on a singular defined by the seat (e.g., a first spot and second spot on the seat), an engine (Figure 1), a drive track (120), a forward-most drive axle (144), two skis (116), a steering shaft (136) operatively connecting the two skis to the steering device (Figure 1) wherein the first seat position is disposed about 565 mm behind the forward most drive axle, the second seat position is disposed behind the first seat position by about 290 or 340mm, the third seat position is disposed behind the second

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seat position by about 310 or 345 mm and the frame is between 1493 and 1913 mm long (see Figures 1 and Figure 8 describing various measured distances on a conventional snowmobile, which measured distances in Figure 8 for the conventional snowmobile can meet the distances required by the claims).

**(b)** AAPA does not specifically disclose that the steering position is disposed forward of the forward most-drive axle.

**(c)** Christensen et al. disclose a snowmobile having a steering position (the position midway between handlebars 10) disposed forward of the forward-most drive axle (Figure 3 shows this configuration) in order to help provide a stable steering system (column 1, lines 37-38).

**(d)** It would have been obvious to one of ordinary skill in the art at the time of the invention to provide that the steering position is disposed forward of the forward most-drive axle on the AAPA snowmobile, as taught by Christensen et al., in order to help provide a stable steering system.

3. Claims 52-65, 67-75, 111 and 112 are rejected under 35 U.S.C. 103(a) as being unpatentable over AAPA in view of Christensen et al.

**(a)** AAPA disclose all of Applicant's claimed invention (refer to 103(a) rejection of claims 26-47 and 50 above) including a tunnel (AAPA discloses a frame that is tunnel-like fitted over the drive track 120) and a back end of the seat extending behind a rearward-most portion of the frame (shown in Figure 1) and a support member extending upwardly and rearwardly from the frame (the portion of the frame shown in



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Figure 1 at the rear end which extends rearwardly & upwardly at an angle to provide support for the bottom rear part of the seat, thereby providing structural support for the seat behind the back end of the frame) and wherein the back end of the seat extends behind the frame by about 80 mm, 230 mm, 60 mm or 290 mm (Figures 1 and 8 describe various measured distances on a conventional snowmobile, which measured distances in Figure 8 for the conventional snowmobile can meet the distances required by the claims since the distance from the back end of the seat extending behind the frame is about the same as the distance I).

**(b)** AAPA does not specifically disclose that the steering position is disposed forward of the forward most-drive axle.

**(c)** Christensen et al. disclose a snowmobile having a steering position (the position midway between handlebars 10) disposed forward of the forward-most drive axle (Figure 3 shows this configuration) in order to help provide a stable steering system (column 1, lines 37-38).

**(d)** It would have been obvious to one of ordinary skill in the art at the time of the invention to provide that the steering position is disposed forward of the forward most-drive axle on the AAPA snowmobile, as taught by Christensen et al., in order to help provide a stable steering system.

**4.** Claims 92-95 and 115 are rejected under 35 U.S.C. 103(a) as being unpatentable over AAPA in view of Christensen et al.

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**(a)** AAPA discloses a snowmobile (110) comprising a frame (Figure 1) having a straddle-type seat (Figure 1), a front suspension being one of an A-arm suspension system and a trailing arm suspension system (Figure 1), a seat position defined by the seat (e.g., a spot on the seat), an engine disposed on the frame in front of the seat (Figure 1), a drive track (120) disposed below the frame and connected to the engine (Figure 1), a forward-most drive axle (144) disposed on the frame (Figure 1), two skis (116), a steering device (e.g., the entire steering unit of 110) having a steering position (a spot on the steering device, 132), a steering shaft (136), wherein the seat position is disposed about 565 mm behind the forward most drive axle (see Figures 1 and Figure 8 describing various measured distances on a conventional snowmobile, which measured distances in Figure 8 for the conventional snowmobile can meet the distances required by the claims).

**(b)** AAPA does not specifically disclose that the steering position is disposed forward of the forward most-drive axle.

**(c)** Christensen et al. disclose a snowmobile having a steering position (the position midway between handlebars 10) disposed forward of the forward-most drive axle (Figure 3 shows this configuration) in order to help provide a stable steering system (column 1, lines 37-38).

**(d)** It would have been obvious to one of ordinary skill in the art at the time of the invention to provide that the steering position is disposed forward of the forward most-drive axle on the AAPA snowmobile, as taught by Christensen et al., in order to help provide a stable steering system.

5. Claims 100-103 and 116 are rejected under 35 U.S.C. 103(a) as being unpatentable over AAPA in view of Christensen et al.

(a) AAPA discloses a snowmobile (110) comprising a frame (Figure 1) having a straddle-type seat (Figure 1), a front suspension being one of an A-arm suspension system and a trailing arm suspension system (Figure 1), a forward-most drive axle (144), two skis (116), a steering shaft (136) operatively connecting the two skis to the steering device (Figure 1), a seat position defined by the seat (e.g., a spot on the seat), an engine disposed on the frame in front of the seat (Figure 1), a drive track (120) disposed below the frame and connected to the engine (Figure 1), wherein the seat position is disposed about 565 mm behind the forward most drive axle and the frame is between 1493 and 1913 mm long (see Figures 1 and Figure 8 describing various measured distances on a conventional snowmobile, which measured distances in Figure 8 for the conventional snowmobile can meet the distances required by the claims).

(b) AAPA does not specifically disclose that the steering position is disposed forward of the forward most-drive axle.

(c) Christensen et al. disclose a snowmobile having a steering position (the position midway between handlebars 10) disposed forward of the forward-most drive axle (Figure 3 shows this configuration) in order to help provide a stable steering system (column 1, lines 37-38).

(d) It would have been obvious to one of ordinary skill in the art at the time of the invention to provide that the steering position is disposed forward of the forward most-drive axle on the AAPA snowmobile, as taught by Christensen et al., in order to help provide a stable steering system.

6. Claims 104 and 117 are rejected under 35 U.S.C. 103(a) as being unpatentable over AAPA in view of Christensen et al.

(a) AAPA discloses a snowmobile (110) comprising a frame (Figure 1) having a straddle-type seat (Figure 1), a front suspension being one of an A-arm suspension system and a trailing arm suspension system (Figure 1), a seat position defined by the seat (e.g., a spot on the seat), an engine disposed on the frame in front of the seat (Figure 1), a drive track (120) disposed below the frame and connected to the engine (Figure 1), a forward-most drive axle (144) disposed on the frame (Figure 1), two skis (116), a steering device (e.g., the entire steering unit of 110) having a steering position (a spot on the steering device, 132), a steering shaft (136) and the frame is between about 1493 mm and 1913 mm long, wherein the steering position is disposed forward of the forward-most drive axle by about 65mm (see Figures 1 and Figure 8 describing various measured distances on a conventional snowmobile, which measured distances in Figure 8 for the conventional snowmobile can meet the distances required by the claims).

(b) AAPA does not specifically disclose that the steering position is disposed forward of the forward most-drive axle.

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(c) Christensen et al. disclose a snowmobile having a steering position (the position midway between handlebars 10) disposed forward of the forward-most drive axle (Figure 3 shows this configuration) in order to help provide a stable steering system (column 1, lines 37-38).

(d) It would have been obvious to one of ordinary skill in the art at the time of the invention to provide that the steering position is disposed forward of the forward most-drive axle on the AAPA snowmobile, as taught by Christensen et al., in order to help provide a stable steering system.

7. Claims 22, 23 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over AAPA in view of Christensen et al., as applied to claim 1, 14, 26 and 40 (respectively) above, and further in view of Atherley (5,944,380).

(a) The modified AAPA snowmobile discloses all of Applicants' claimed invention except for a second seat section that is removable with a cargo space behind the first seat section and beneath the second seat section. Atherley discloses a seat having first and second seat sections (106 and 104, respectively) with a cargo space (44) beneath the second seat section (see Figure 4, for example) wherein the second seat section is removable (see Figure 7) in order to provide the seat exchangeability. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide a second removable seat section with a cargo space beneath it on the modified AAPA snowmobile as taught by Atherley in order to provide seat exchangeability.

8. Claims 48, 49, 51, 66 and 76 are rejected under 35 U.S.C. 103(a) as being unpatentable over AAPA in view of Christensen et al., as applied to claims 26, 48, 40, 65 and 76 (respectively) above, and further in view of Atherley (5,944,380).

(a) The modified AAPA snowmobile discloses all of Applicants' claimed invention except for a second seat section that is removable with a cargo space behind the first seat section and beneath the second seat section. Atherley discloses a seat having first and second seat sections (106 and 104, respectively) with a cargo space (44) beneath the second seat section (see Figure 4, for example) wherein the second seat section is removable (see Figure 7) in order to provide the seat exchangeability. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide a second removable seat section with a cargo space beneath it on the modified AAPA snowmobile as taught by Atherley in order to provide seat exchangeability.

9. Claims 118, 122-130 are rejected under 35 U.S.C. 103(a) as being unpatentable over Applicant's Admitted Prior Art, hereafter, AAPA, in view Christensen et al. (U.S. Patent 3,734,219).

(a) AAPA discloses a snowmobile (110) comprising a frame (Figure 1) having a straddle-type, singular seat (Figure 1), a front suspension being one of an A-arm suspension system and a trailing arm suspension system (Figure 1), first, second and third seat positions on a singular defined by the seat (e.g., a first spot and second spot on the seat), an engine (Figure 1), a drive track (120), a forward-most drive axle (144), two skis (116), and a steering device (e.g., the entire steering unit of 110) having a

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steering position (a spot on the steering device, 132), a steering shaft (136) wherein a seat position is disposed about 565 mm behind the forward most drive axle (see Figures 1 and Figure 8 describing various measured distances on a conventional snowmobile, which measured distances in Figure 8 for the conventional snowmobile can meet the distances required by the claims).

**(b)** AAPA does not specifically disclose that the angle of the steering shaft is  $33^{\circ}$  from the vertical or that the steering position is disposed forward of the forward most-drive axle.

**(c)** Christensen et al. disclose a snowmobile having a steering position (the position midway between handlebars 10) disposed forward of the forward-most drive axle (Figure 3 shows this configuration) and that the angle of the steering shaft is  $33^{\circ}$  from the vertical (col. 2, lines 43-45) in order to help provide a stable steering system (column 1, lines 37-38).

**(d)** It would have been obvious to one of ordinary skill in the art at the time of the invention to provide that the steering position is disposed forward of the forward most-drive axle and a steering shaft having an angle of  $33^{\circ}$  from the vertical on the AAPA snowmobile as taught by Christensen et al., in order to construct a preferred snowmobile design and to help provide a stable steering system.

**(e)** It is noted that since it has been held that discovering an optimum value of a result effective variable (for example an optimum angle of a steering shaft, various seat positions as measured from a forward-most drive axle or a distance between a steering

position and a forward-most drive axle) involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

**(11) Response to Argument**

The Examiner will address the arguments in the order they were presented in the Appeal Brief (filed 6/9/04).

Although Appellants Argument section begins on page 19, there are no actual arguments until page 27. Appellants merely take seven pages to summarize case law (such as Graham v. John Deere Co.), what the prior art used teaches (AAPA, Christensen et al. and Atherley) and generalizations (such as part “4.” on page 23 that certain claims “Are Not Obvious Over AAPA in View of Christensen et al.) These pages present no actual arguments as to why the prior art does not meet the claimed limitations and therefore the comments on those pages will not be addressed.

**1. Steering Position**

The Appellants first argument is that the limitation throughout the independent claims, “a steering device having a steering position...disposed forward of the forward most drive axle”, is not met by Christensen et al. All that the claim calls for is a “steering position...disposed forward of the forward most drive axle.” In Christensen et al., the forward most drive axle is “k”, as illustrated best in Figure 3. MPEP section 2111 requires that **a)** claims must be given their broadest reasonable interpretation consistent with the supporting description and that **b)** a claim must be interpreted in light of the specification without reading limitations into the claim. As Appellants correctly state, on



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page 27 in the third full paragraph, the steering position is defined in their application as a center of a portion of the steering device adapted to be held by the hands of the rider. To interpret the "steering position" in the claims as this definition would be giving the claim(s) the exact or only or most specific interpretation consistent with the supporting description. Therefore, the Examiner had to give "steering position" the broadest reasonable interpretation consistent with the specification, which could only be broader than that described in the specification on page 8, paragraph [0041].

Steering position is not a term of art used in the snowmobile art. This is an Appellant invented term, which they have decided not to limit, as far as interpretation goes, any further in the claims other than describing that it (the steering position) is on a steering device. Therefore the broadest reasonable interpretation would be a point or points, within some range of positions, on which the operator's hands would be placed, in order to steer the snowmobile. Figure 3, when taken in conjunction with the description of Figure 3 in the Christensen et al. disclosure, discloses that the operator's hands would always be located at a steering position which is forward of the forward most drive axle. Appellants have kindly marked a vertical line in Figure 3 of Christensen et al. as shown on page 26 of the Appeal Brief. This line shows what is forward of the forward most drive axle, "k", and what is to the rear of "k". Since Figure 3 is described as "a side elevation...with the steering mechanism turned correspondingly to Fig. 2", the handlebars, 10, would be located even more forwardly of "k", as seen in Figure 3, if they were not "turned". Therefore the steering position, in fact, any possible steering position

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of the Christensen et al. steering device, 10, must, necessarily be located forward of the forward most drive axle, "k".

Appellants next argue that the explicit teaching in the Figures of Christensen et al. that the steering position is located forward of the forward most drive axle is only "incidental to the disclosure of Christensen et al. and is of little value" (page 28). This argument is flawed because the drawings themselves are explicit teachings. Figure 3 of Christensen et al. explicitly shows the forward most drive axle, k, located rearward of any possible steering position (i.e., a point or points, within some range of positions, on which the operator's hands would be placed, in order to steer the snowmobile.)

## **2. Seat Positions**

The next set of arguments presented by Appellants is that no teaching of a first seat position disposed less than 590 mm behind the forward most drive axle is present (this argument starts in the 2<sup>nd</sup> full paragraph on page 29). However, the Examiner is not interpreting the "first seat position" of AAPA to be exactly what Appellants have said the "first seat position" of the prior art is. The Examiner is interpreting the first seat position to simply be a position within the range of less than 590 mm behind the forward most drive axle, 146, of the prior art. This is entirely possible, because for example, a first seat position (which is defined in the claims as no more than just that) can be a position in the range of distances A+J in Figure 1. Since the claim language is so broad, it demands an equally broad interpretation. There is no requirement that the Examiner must interpret the first seat position as distance D+A, as Appellants have interpreted (page 29). Appellants have aptly provided a summary of the prosecution

history as far as this term is concerned and have correctly stated that no one that was involved on the USPTO side of any interviews have agreed with Appellants (pp. 29-30).

The same logic used in countering Appellants argument regarding a first seat position being less than 590 mm behind a forward most drive axle is applicable to all arguments regarding a certain seat position behind located a certain distance.

**3. Steering Shaft Angle**

Appellants next argument is that Christensen et al. does not disclose the specific angle of the steering shaft that is recited in the claim (starting at p. 33). Christensen et al. do disclose a steering shaft (unlabelled but shown in Figures 1, 2 and 5, and clearly above an engine, not shown, because h is disclosed as being an engine drive pulley therefore requiring that the engine be in the front of the snowmobile, as is typical, customary and notoriously old in the art of snowmobiles) that, while specifically not shown, must connect, at the same angle, to the shafts 13 and 14, as is obvious from Figure 3. Since shafts 13 and 14 are disclosed as being at an angle of 25 degrees from the vertical, more or less (col. 2, lines 43-45), the limitation that the unlabelled steering shaft is 33 degrees from vertical is met by this.

**4. No Suggestion to Combine**


In response to applicant's argument that there is no suggestion to the references combine (p. 36), the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in

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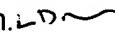

the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the motivation is found in the reference itself, i.e., in Christensen et al. (this motivation was listed in the rejection as found at col. 1, lines 37-38 of Christensen et al. for example).

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

  
Matt Luby  
Examiner  
Art Unit 3611

M.I.   
May 11, 2005

Conferees  
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